

## Chapter 15

### CONTRACTS\*

Art. I.	In General, §§ 15-1—15-15
Art. II.	Anti-Discrimination Provisions in City Contracts, §§ 15-16—15-40
Art. III.	Contracts For Public Improvements and Maintenance, §§ 15-41—15-60
Art. IV.	Responsibility of Bidders in Connection with Certificated Contracts, §§ 15-61—15-80
Art. V.	Minority and Women Business Enterprises, §§ 15-81—15-89
Art. VI.	Persons with Disabilities Business Enterprises, §§ 15-90—15-100
Art. VII.	Public Works Contractor Debarment, §§ 15-101—15-120
Art. VIII.	City Contractors; Indebtedness to City, §§ 15-121—15-140
Art. IX.	Small Business Enterprises, §§ 15-141, 15-142

#### ARTICLE I. IN GENERAL

##### **Sec. 15-1. Public policy; prohibited interest in city contracts; persons indebted to city.**

(a) It shall be against the public policy of the city as expressed by the city council for any employee of the city to bid on or to be awarded any contract being let by the city or to be pecuniarily interested, directly or indirectly, in any contract let by the city, or in any work done by the city, or in any matter wherein the rights or liabilities of the city are or may be involved.

(b) It shall be against the public policy of the city as expressed by the city council for any firm, partnership or corporation, in which any employee of the city has any ownership interest in excess of one percent of the total ownership interest in such firm, partnership or corporation to bid on or to be awarded any contract being let by the city or to be pecuniarily interested, directly or indirectly, in any contract let by the city, or in any work done by the city or in any matter wherein the rights or liabilities of the city are or may be involved.

(c) It shall be against the public policy of the city to enter into any contract or other transaction or business relationship or amend or extend any contract or business transaction that (i) requires

the expenditure of funds equal to or exceeding the amount that requires the taking of competitive bids under state law, as amended from time to time, or (ii) grants a right, privilege, lease or franchise valued, in any one year period, in an amount equal to or in excess of the amount prescribed in (i) of this subsection, if the proposed contracting entity or any owner thereof is then indebted to the city or a qualifying entity, as set forth in article VIII of this chapter.

(d) In the event that any contract or work, purchase or sale, is found to have been made in violation of subsections (a) or (b) hereof, then the said contract or work, purchase or sale, shall be null and void and shall be discontinued, and new arrangements shall be entered into as in the case of the incipency of such contract of work, purchase or sale.

(e) It is a defense to prosecution under this section that the person contracting with the city is employed at one of the city's golf or tennis facilities and has executed a concession contract with the city to teach golf or tennis lessons at such facilities at times outside the person's regular working hours.

(Code 1968, § 2-36; Ord. No. 68-682, §§ 1—3, 5-1-68; Ord. No. 94-20, § 1, 1-5-94; Ord. No. 03-318, §§ 2, 3, 4-2-03; Ord. No. 05-370, § 1, 4-13-05)

**Editor's note**—Ord. No. 03-318, § 3, adopted April 2, 2003, provided for the addition of a new 15-1(c) and the

\***Charter reference**—Contracts generally, Art. II, §§ 7a, 19, 19a.

**Cross references**—Rental agreements for use of convention and entertainment facilities coliseum, etc., § 12-21 et seq.; ethics and financial disclosure, Ch. 18.

renumbering of the existing (c) to (d). Said ordinance did not provide for the renumbering of the existing (d). Therefore, the existing (d) was renumbered as (e) at the discretion of the editor.

**Cross reference**—Ethics and financial disclosure, Ch. 18.

### **Sec. 15-2. Collusion in bidding on public work.**

(a) It shall be unlawful for any two or more persons, directly or indirectly, to enter into any collusion or agreement of any kind, oral or otherwise, by which such persons, either, both or all, shall agree to refrain from bidding on public improvements to be constructed by the city, or shall agree to submit bids on certain work and not on certain other work to be done by the city, or shall in any manner attempt to restrain, hinder or influence competitive bids on public work of any kind to be done by the city.

(b) The city council shall have the right, if it appears that there has been collusion among bidders on any public work to be done by the city, to investigate and ascertain the facts as to the existence or nonexistence of such agreement or collusion, and for that purpose shall have the power to summon witnesses, administer oaths and to do all things necessary to determine the true facts in all such cases. The accused parties at such proceedings shall have the right to have witnesses summoned, to be represented by counsel and to be heard in their own defense of the charges brought against them. Should the city council determine, from the evidence before it, that any two or more of the bidders have entered into an agreement in violation of subsection (a) hereof, it shall so declare, and the bids submitted, if any, by any such persons shall be rejected by the council. The findings of the city council shall set forth the names of all persons found guilty by it of such charge of collusion, and shall declare such bidders forever precluded and barred from doing any public work under contract with the city and from submitting bids therefor, and from holding any employment or office of employment whatsoever in the pay of the city. Such findings shall be set forth in the form of a resolution, which shall be recorded in the minutes or journal of the council as a permanent record.

(c) It shall be unlawful for the director of public works and engineering or the director of building services after any such bidder shall have been found guilty by the city council of such collusion or agreement prohibited by subsection (a) hereof, knowingly to deliver or to cause to be delivered to any such person any bidding sheets, plans or specifications for public improvements to be constructed by the city. For a violation of this subsection, the director of public works and engineering and the director of building services shall be subject to removal from office by the mayor and city council.

(Code 1968, § 28-49; Ord. No. 90-635, § 46, 5-23-90; Ord. No. 93-514, § 31, 5-5-93; Ord. No. 99-378, § 7, 4-21-99)

**Note**—Section 15-2(c) shall take effect July 1, 1999.

### **Sec. 15-3. Bid opening procedures, rules and appeals.**

(a) Bids shall be opened and read at a public meeting conducted by the city secretary, or an assistant city secretary, with the assistance of representatives of the department of finance and administration, the department of building services and the department of public works and engineering.

(b) Such meeting shall be conducted in accordance with the following rules:

- (1) The meeting shall be held at the time, date and place designated in the bid advertisement, except as provided below.
- (2) The place of the meeting shall ordinarily be in the council chamber in the City Hall, provided any other available office or space located in the City Hall or the City Hall Annex may be used.
- (3) The time shall ordinarily be 11:00 a.m., provided, any other time between 9:00 a.m. and 4:00 p.m. may be designated for the beginning of the meeting.
- (4) The day of the meeting shall ordinarily be on a Tuesday, provided, such meeting may be conducted on any day of the week except Sunday or a legal holiday.
- (5) If the place designated in the advertisement for bids for the bid opening becomes

CONTRACTS

§ 15-3

unavailable, and if the advertisement includes notice that the place of the meeting may be transferred in accordance with this paragraph, the meeting may be transferred to another available office or space in the City Hall or the City Hall Annex by

posting a notice on the door of the city council chamber or the other office or space designated in the advertisement.

- (6) The time and date and, when appropriate the place of the meeting, designated in the bid advertisement, may be rescheduled without the necessity of readvertising for bids, if:
  - a. The advertisement includes notice that the meeting may be rescheduled in accordance with this paragraph, provided the rescheduled time or date may not be earlier than the time or date advertised;
  - b. The department handling the procurement issues an addendum to the bidding documents which reschedules the bid opening; and
  - c. The rescheduled date, time and place for the bid opening is publicly announced at the time the bid opening was previously scheduled.
- (7) Eligible bids shall be those bids received by the office of the city secretary not less than 30 minutes before the time the bid opening meeting is set to convene.
- (8) Late or unsealed bids shall not be read by the city secretary and shall be returned to the bidder unopened. A bidder may appeal the ruling of the city secretary in this regard to the city council as hereinafter provided.
- (9) The city secretary shall announce and note apparent irregularities in the bid documents, provided, any omission in this regard shall not bar the city from disqualifying such bid if other irregularities are later found.
- (10) After completion of the bid opening, the city secretary shall refer the bids to the appropriate departments for tabulation and recommendation.
- (11) At the closing of the meeting, the city secretary shall announce that the bids will be returned to the office of the city secretary and shall be open for public

inspection for two days during usual business hours before any award will be made, unless city council authorizes an award on an emergency basis.

- (12) Bid deposits shall be returned to bidders as provided in section 15-46 of this Code.
- (13) With reference to purchase orders, the city secretary shall return the deposits of the unsuccessful bidders upon receipt of the purchasing agent's tabulation of the bids and recommendation as to the award of the bid, except that the city secretary shall retain the bid deposit of the lowest bidder as recommended by the purchasing agent until such time as the bid has been awarded by council motion or council has rejected all the bids.
- (14) The bid opening meeting and the bidding process shall be conducted in accordance with the applicable laws of the state.

(c) Any bidder who is dissatisfied with a ruling of the city secretary which disallows the reading of the bid may appeal such ruling by filing a written appeal with the office of the city secretary within seven (7) days from the date of such ruling. Such appeal may be delivered by the bidder or the bidder's representative, or it may be mailed, certified mail, return receipt requested, in which event it shall be deemed timely if postmarked within such seven-day period. Any bidder dissatisfied with an award may appear before the city council to present pertinent evidence. On appeal to city council the appellant shall be given the opportunity to appear before council and present written or oral testimony with five-minute time limit unless otherwise directed by city council. (Code 1968, § 2-3; Ord. No. 82-1316, § 1, 8-24-82; Ord. No. 83-183, § 1, 2-8-83; Ord. No. 90-635, § 47, 5-23-90; Ord. No. 92-911, § 1, 6-30-92; Ord. No. 93-514, § 32, 5-5-93; Ord. No. 96-1135, § 1, 10-30-96; Ord. No. 99-378, § 8, 4-21-99)

**Note**—Section 15-3(a) shall take effect July 1, 1999.

#### **Sec. 15-4. Reserved.**

**Editor's note**—Ord. No. 03-318, § 5, adopted April 2, 2003, repealed § 15-4 in its entirety. Formerly, said section pertained to disclosure of contracting entities and derived from Ord. No. 02-953, § 2, 10-23-02.

**Secs. 15-5—15-15. Reserved.****ARTICLE II. ANTI-DISCRIMINATION  
PROVISIONS IN CITY CONTRACTS\*****Sec. 15-16. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Affirmative action.* The policies, requirements, and procedures established in Subparts B and C, 41 C.F.R. 60-2 (1971), as amended, which are incorporated in this article by reference and a copy of which will remain on file in the office of the city secretary.
- (2) *Bidder.* Any person seeking to be awarded a contract by the city.
- (3) *Contractor.* Any person who, after August 9, 1978, and through a contract or other arrangement, has received, is to receive, or is receiving public funds for work or services rendered.
- (4) *Discriminate, discriminates and discrimination.* Distinguish, differentiate, separate, or segregate solely on the basis of race, age, religion, color, sex, or national origin.
- (5) *Director.* The head of the respective department within the municipal government of the city primarily responsible for the management and inspection of the performance of work under a contract in each department.

(Code 1968, § 2-291; Ord. No. 78-1538, § 1(1), 8-9-78)

**Sec. 15-17. Equal employment opportunity clause.**

All contracts entered into by the city involving the expenditure of \$10,000.00 or more of city

funds ("nonexempt city contracts") shall incorporate an equal employment opportunity clause, which shall read as follows:

**"EQUAL EMPLOYMENT OPPORTUNITY**

- "1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier, or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the city setting forth the provisions of this equal employment opportunity clause.
- "2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
- "3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or workers' representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

\*Cross reference—Discrimination generally, Ch. 17.

- "4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the secretary of labor or other federal agency responsible for enforcement of the equal opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the mayor and/or contractor compliance officer(s) for purposes of investigation to ascertain and effect compliance with this program.
- "5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the secretary of labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate city and federal officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and workforce statistics of the contractor, subcontractor, vendor, supplier, or lessee.
- "6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's noncompliance with the nondiscrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further city contracts in accordance with procedures provided in executive order no. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said executive order, or by rule, regulation, or order of the secretary of labor, or as may otherwise be provided by law.
- "7. The contractor shall include the provisions of paragraphs 1—8 of this equal employment opportunity clause in every

subcontract or purchase order unless exempted by rules, regulations, or orders of the secretary of labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such

litigation to protect the interests of the United States.

- "8. The contractor shall file and shall cause each of his subcontractors, if any, to file compliance reports with the city in the form and to the extent as may be prescribed by the mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor."

(Code 1968, § 2-292; Ord. No. 78-1538, § 1(2), 8-9-78)

#### **Sec. 15-18. Notice to bidders.**

All notices to prospective bidders published on behalf of the city must include as a part of the contract specifications that all bidders will be required to comply with the provisions of this article. (Code 1968, § 2-293; Ord. No. 78-1538, § 1(3), 8-9-78)

#### **Sec. 15-19. Contract compliance commission.**

(a) There is hereby created and established a contract compliance commission composed of five (5) persons who shall be resident citizens of the city. The commission shall have the duties and powers as set out in this article.

(b) The five (5) members of the contract compliance commission shall be appointed by the mayor and confirmed by the city council. The mayor shall designate the member to be chairman of the commission.

(c) The membership of the contract compliance commission shall be filled as follows:

- (1) One person from the construction industry;
- (2) Two (2) persons from the minority group containing the largest number of minority workers in industry in Houston;
- (3) One person from the minority group containing the second largest number of minority workers in industry in Houston; and
- (4) One person from the public at large.

(d) The mayor shall designate two (2) of the initial members of the commission to serve for a

term of two (2) years and three (3) members of the commission to serve for a term of one year, respectively, from the date of their appointment and confirmation. Thereafter terms of all members shall be for two (2) years from the date of their appointment and confirmation.

(Code 1968, § 2-294; Ord. No. 78-1538, § 1(4), 8-9-78)

**Cross reference**—Boards, commissions, authorities, etc., § 2-316 et seq.

#### **Sec. 15-20. Appointment of contract compliance officers.**

(a) Each director whose department is responsible for the management and inspection of the performance of work on a contract shall appoint one or more contract compliance officers.

(b) The director of the affirmative action division shall appoint one or more contract compliance officers.

(Code 1968, § 2-295; Ord. No. 78-1538, § 1(5), 8-9-78)

#### **Sec. 15-21. Function of contract compliance officers.**

(a) It shall be the function of the contract compliance officers to see that all nonexempt city contracts with all contractors, vendors, suppliers, and lessees contain the equal employment opportunity clause, and all of the required language as set forth in the Code of Federal Regulations that is applicable for federal and federally assisted contracts. Further, it shall be the function of the contract compliance officer to determine, after review, if a city contractor is in compliance with this policy.

(b) The contract compliance officers of the affirmative action division of the mayor's office shall coordinate with the contract compliance officers of the respective departments so that he or she can monitor all contract compliance functions in all city departments and divisions to ensure that contract compliance procedures are applied uniformly throughout the city.

(c) The contract compliance officers shall cooperate fully with the minority procurement coordinator of the city in locating and encouraging

minority businesses to enter into contracts involving the expenditure of less than ten thousand dollars (\$10,000.00) of city funds ("exempt city contracts"), as well as nonexempt city contracts, and to assist minority contractors whenever possible. (Code 1968, § 2-296; Ord. No. 78-1538, § 1(6), 8-9-78)

#### **Sec. 15-22. Noncompliance of contractor.**

In the event that a contract compliance officer obtains a finding of noncompliance, the following procedure will be instituted:

- (1) Where deficiencies are found to exist in a contractor's wage, hiring, and employment practices, the contract compliance officer shall issue, in writing, a notice of noncompliance to such contractor, giving any such contractor fourteen (14) days after receipt of such notice to show cause why the imposition of sanction should not be instituted. The notice which shall be served upon the contractor by certified United States mail, return receipt requested, shall set forth:
  - a. The specific basis and reasons, actions or failure to act, and all other relevant data which caused the noncompliance finding;
  - b. The specific statutes, regulations, and/or ordinances with which the contractor is not complying;
  - c. The date of the compliance review;
  - d. A specific date by which the compliance must be achieved by the contractor;
  - e. The action to be taken by the city for continued noncompliance;
  - f. The time and place of any informal conciliation conference between the contractor and the contract compliance officer;
  - g. The specific documents, records, or other relevant information concerning the contractor's compliance status as requested by the contract compliance officer.
- (2) If, within this fourteen-day time period, the contractor is unable to show good cause for his failure to resolve said deficiencies, the contract compliance officer shall issue a notice of proposed recommendation of sanctions to the contractor and to the contract compliance commission. The notice which shall be served upon the contractor by certified United States mail, return receipt requested, shall set forth:
  - a. A short and plain statement of the matters furnishing a basis for the imposition of sanctions;
  - b. A citation of the provisions of the executive order, regulations, or ordinances pursuant to which the requested action may be taken;
  - c. The date of the compliance review;
  - d. The date of the informal conciliation conference between the contractor and the contract compliance officer;
  - e. The specific documents, records, and other relevant information concerning the contractor's compliance status as requested by the contract compliance officer;
  - f. An enumeration of the sanctions being requested.
- (3) The contractor shall be afforded fourteen (14) days from receipt of proposed recommendation of sanctions to file an answer and to make a request for a hearing with the contract compliance commission.
- (4) If a hearing is requested within the specified time limit, a hearing shall be provided for the contractor, vendor, or supplier as set forth in this procedure.
- (5) If at the end of the fourteen-day period, no answer including a hearing request has been made, in writing, the contractor shall be deemed to have waived the right of a hearing, and shall be deemed to have consented to the making of a decision by the contract compliance commission on the basis of such information as is available.
- (6) In the event the address of the contractor is unknown or that notice which has been mailed is returned undelivered, service upon any employee or agent at the contract site shall be deemed service upon the contractor.

(Code 1968, § 2-297; Ord. No. 78-1538, § 1(7), 8-9-78)

#### **Sec. 15-23. Hearing procedure.**

- (a) All hearings held by the contract compliance commission shall be public and shall be con-

ducted under rules consistent with the nature of the proceedings; provided, however, that the following rules shall apply to such hearing:

- (1) The formal rules of evidence applicable to judicial proceedings are not required. The contract compliance commission may receive hearsay testimony or evidence which, while technically objectionable, is in its discretion relevant and reasonably reliable.
- (2) The contract compliance commission may exclude irrelevant, cumulative, immaterial, or repetitious evidence.
- (3) Only evidence presented before the contract compliance commission at such hearing may be considered in rendering a final order.
- (4) All parties to the hearing may be represented by a licensed attorney, though an attorney is not required.
- (5) Each party may present witnesses in his own behalf.
- (6) Each party has the right to cross-examine all witnesses.
- (7) All witnesses may be placed under the witness rule at the request of any party. The legal department of the city shall have an attorney present at each hearing held by the contract compliance commission. Such attorney shall advise the contract compliance commission as to procedural matters only, and shall not give any opinion as to the weight of the evidence or partake in any determination of the facts.

(b) If the contractor does not appear before the contract compliance commission at the date and time specified, the contract compliance officer may introduce evidence showing the noncompliance of the contractor, vendor or supplier.

(c) After completion of the presentation of evidence by all parties appearing, the contract compliance commission shall make written findings and a final order as to whether a violation of this Code exists, setting forth in such written findings the specific conditions which classify the contractor to be in noncompliance in violation of this

Code, federal regulations, or executive order. If the contract compliance commission finds that violation of this Code, federal regulations or executive order exists, the contract compliance commission shall submit its recommendation to the mayor and city council.

(Code 1968, § 2-298; Ord. No. 78-1538, § 1(8), 8-9-78)

#### **Sec. 15-24. Sanctions.**

(a) Upon receiving the recommendation of the contract compliance commission, the mayor and city council shall review and consider the recommendation of the contract compliance commission within 30 days. The mayor and city council may request a hearing de novo or it may make its decision based upon the reports and records of the contractor and/or the contract compliance commission.

(b) Subsequent to review, the mayor and city council may do either of the following:

- (1) Cancel, terminate, or suspend the contract in whole or in part;
- (2) Declare the contractor ineligible for further contracts until compliance is achieved; and
- (3) Impose other sanctions as provided by law.

(c) The decision of the mayor and city council shall be final.

(Code 1968, § 2-299; Ord. No. 78-1538, § 1(9), 8-9-78)

#### **Secs. 15-25—15-40. Reserved.**

### **ARTICLE III. CONTRACTS FOR PUBLIC IMPROVEMENTS AND MAINTENANCE**

#### **Sec. 15-41. Legal holidays designated for purposes of specifications.**

As the term is used in section 39 of the city's general conditions, form E-10 (as made a part of the specifications for city construction contracts),

the term "legal holiday" shall hereafter mean, include, and be limited to the following days, and none others:

- (1) New Year's Day.
- (2) San Jacinto Day.
- (3) July Fourth.
- (4) Labor Day.
- (5) Thanksgiving Day (to-wit, the Thursday in November which is generally observed in Houston as Thanksgiving Day as evidenced by the closing of the city hall for business on that day).
- (6) Christmas Day.
- (7) The Monday following any of the above named and designated days, when the named and designated day falls on Sunday.

(Code 1968, § 13-1)

#### **Sec. 15-42. Rejection of bids.**

Nothing contained in this article shall be construed as depriving the awarding officials of the right to reject any bid made by a bidder at any time prior to the actual awarding of a contract, where there have been developments subsequent to the qualification and classification of any such bidder which, in the opinion of the city council, would affect the responsibility of such bidder.

(Code 1968, § 13-3)

**Charter reference**—Reservation of right to reject bids, Art. II, § 19.

#### **Sec. 15-43. Effect of false statements by bidders.**

Any person who makes, or causes to be made, any false, deceptive or fraudulent statement in any questionnaire required to be submitted shall be permanently disqualified from bidding on all public works in the city. The city council shall have the right to require the forfeiture, as liquidated damages to the city, of the bidding bond deposited by any person who makes or causes to be made, any false, deceptive or fraudulent statement in any such questionnaire.

(Code 1968, § 13-4)

#### **Sec. 15-44. Bids, bid bonds and bid documents, generally.**

(a) As used in this section, the following terms and phrases shall have the following meanings:

- (1) *Bid* means a written offer to perform the work described in the bid documents for a specified fee.
- (2) *Bid bond* means a valid and enforceable bond which is in substantial compliance with the following requirements:

- a. The bond must be executed by a corporate surety authorized by the state board of insurance to conduct insurance business in the State of Texas and shall comply with any other requirements set out by law or included in the bid package.
- b. The bond must be payable to the city.
- c. The bond must be conditioned such that if the bidder is awarded the contract and then fails either to execute the contract timely or to provide any required bonds timely, or to do both, then in that event the surety will be obligated to pay to the city an amount equal to the difference between the bid of the bidder on whom the bond was written and the bid of the bidder who is finally awarded the contract and who executes the contract and provides the required bonds, up to the penal sum of the bond.

- (3) *Bid documents* means the group of documents prepared in connection with an invitation for bids or a request for proposals, including, without limitation, the bid invitation, the bid proposal form, the request for proposals, the drawings, the plans, the specifications, and the instructions to bidders.

- (4) *Performance bond* means a valid and enforceable bond which is in substantial compliance with the following requirements:

- a. The bond must be executed by a corporate surety authorized by the

state board of insurance to conduct insurance business in the State of Texas.

- b. The bond must be payable to the city.
- c. The bond must be conditioned upon the faithful performance of work in accordance with the plans, specifications and contract documents.
- d. The bond must comply with any special requirements contained in the bid package.
- e. The bond must be accompanied by satisfactory evidence of the authority of the surety's agent to bind the surety by executing the bond.

(5) *Public works projects* means projects calling for the construction, repair or renovation of buildings, streets, bridges, sewers, water lines, or any other publicly owned improvements to real property.

(b) All bid documents prepared by or on behalf of the city for public works projects or for contracts for the maintenance of public property shall require:

- (1) That bidders must submit, along with their bids, a bid bond or a certified or cashier's check, in an amount equal to ten percent of their respective bids.
- (2) That the bidder to whom the contract is awarded must, if the contract amount exceeds \$25,000.00, provide a performance bond in an amount equal to 100 percent of the contract amount.
- (3) That the bidder to whom the contract is awarded must provide such other bonds as are required by law or by the terms of the bid documents.

(Code 1968, § 13-5; Ord. No. 87-536, § 1, 4-21-87; Ord. No. 93-98, § 1, 1-27-93)

**Sec. 15-45. Cashier's or certified check in lieu of bid bond.**

(a) Bidders submitting bids for the furnishing of materials only shall have the option of furnishing to the city, with any such bid, a cashier's or certified check in the sum of ten percent of the

amount of such bid, in lieu of the bidder's bond required by section 15-44 of this Code. Such cashier's or certified check shall be furnished on the same terms and conditions as set out in section 15-44 of this Code.

(b) When the city and the county jointly advertise for bids for any work pertaining to public improvements or maintenance of public property in the city, all persons bidding upon any such work shall submit, with their proposal to perform the work advertised, a certified check in the sum of five percent of the amount of such bid. Such certified check shall be made payable to the city and county, and shall be conditioned upon the same terms and conditions as set out in section 15-44 of this Code.

(Code 1968, § 13-6; Ord. No. 96-1135, § 2, 10-30-96)

**Sec. 15-46. Return of bid bonds; rejection of bids.**

(a) Upon receipt by the city secretary of a tabulation of bids and a recommendation as to the award of a contract, the city secretary shall return to each bidder who has made a bid deposit the bond, cashier's check or certified check representing such deposit, except that the city secretary shall retain any such deposit made by the lowest and second lowest bidders, as shown by such tabulation. Any deposit so retained shall be returned at such time as a contract has been awarded and signed or at such time as the director of the public works and engineering department, the purchasing agent, the director of building services or the director of aviation, depending upon which initiated the contract, requests that it be returned pursuant to the authority granted in subsection (b) below or upon rejection of the bids by city council.

(b) The city council hereby delegates to the directors of public works and engineering, building services, and aviation departments and to the city purchasing agent authority on its behalf to reject all bids pursuant to section 252.043 of the Texas Local Government Code, and the authority to direct the city secretary to return all bid bonds on any project under the following circumstances:

- (1) All bids received exceed the department director's or purchasing agent's estimated

costs, and the director or purchasing agent determines that the bids appear to be excessive; or

- (2) The department director or purchasing agent determines that the project or purchase is no longer required; or
- (3) The department director or purchasing agent determines that the city's design or specifications for the project or bid should be revised and new bids should be taken.

The delegation created in this subsection is nonexclusive, and nothing herein shall be construed to preclude the city council from rejecting any or all bids received for any project or purchase.

(Ord. No. 96-1135, § 3, 10-30-96; Ord. No. 99-378, § 9, 4-21-99; Ord. No. 01-356, § 1, 4-25-01)

Note—Section 15-46(b) shall take effect July 1, 1999.

#### **Sec. 15-47. Bonds filed for release of liens for labor or material.**

(a) In the matter of bonds which may be filed with the city under the provisions of Article 5472b-1 of Vernon's Texas Civil Statutes to procure the release and discharge of funds owing by the city to contractors from liens fixed or attempted to be fixed pursuant to the provisions of Articles 5472a and 5472b of Vernon's Texas Civil Statutes, the city council hereby provides and directs the following procedure in the matter of approval of such bonds:

- (1) The city controller, being under the city charter and ordinances the chief disbursing officer of the city, is hereby declared to be the proper official with which any such bond shall first be filed. Upon receipt by him of any such bond, he shall endorse thereupon over his signature the date and hour of the filing thereof with him.
- (2) Every such bond shall be promptly referred by the city controller to the city attorney, and he or one of his assistants shall examine the same and if such bond is found to be in accordance with the requirements of such Article 5472b-1 and to be executed as by such article required, and if it is found that the surety thereon is

a corporate surety authorized under state law to execute such bond as surety, the city attorney or one of his assistants shall endorse his approval upon the bond and forward the same to the mayor for acceptance and approval on behalf of the city.

- (3) The mayor is hereby authorized to accept and approve on behalf of the city any such bond so received by him and bearing such previous approval by the city attorney or one of his assistants. The mayor shall endorse upon the bond his acceptance and approval, and forward the same to the city controller.
- (4) The city controller shall thereupon, as provided by such Article 5472b-1, be authorized to pay out the money still owing the contractor as fully as if the claims discharged by such bond had not been filed with him. He shall, however, as by such article directed, send by registered mail to each such claimant an exact copy of such bond acquainting them with the date on which it was first filed with him.

(b) The city attorney or his assistant passing upon and examining the bonds as provided for above, shall not approve the same for approval and acceptance by the mayor until there are furnished him by the party filing the bond in the first instance sufficient exact copies thereof to permit the mailing of such copies to all claimants as hereinabove directed.

(Code 1968, § 13-8)

#### **Sec. 15-48. Extension of performance date.**

In the matter of requests for extensions of time for the performance of city contracts on account of weather conditions or other circumstances beyond the control of the contractor, as provided in paragraph 39 of the city general conditions, form E-10, the director of the department at interest, instead of submitting such requests to the city council, shall submit the same with his recommendation thereupon to the mayor, whose approval or disapproval thereof shall be final and binding, to the same effect and extent as if made by the city council as by such specification contemplated. Nothing herein contained shall, how-

ever, prevent the mayor in any instances in which he considers the same advisable from submitting the request to the city council for its approval or disapproval instead of acting on it himself.  
(Code 1968, § 13-9)

**Secs. 15-49—15-60. Reserved.**

**ARTICLE IV. RESPONSIBILITY OF  
BIDDERS IN CONNECTION WITH  
CERTIFICATED CONTRACTS**

**Sec. 15-61. Definitions.**

As used in this article, the following terms have the meanings given below:

*Certificate* means, with respect to any given contract, an unexpired and unrevoked certificate of responsibility issued pursuant to this article for the classification which includes such contract.

*Certificated contract* means a city contract where:

- (1) The contract is within a classification of contracts established by motion or resolution of the city council, which motion or resolution also includes specific qualifications for a certificate for such classification; and
- (2) The notice to bidders or other bidding document for the contract refers to this article.

*Director* means the head of the department which has primary responsibility for the bidding procedure for a contract, or such other person as such department director may authorize to perform the duties of the director under this article.  
(Ord. No. 84-146, § 1, 1-31-84; Ord. No. 05-91, § 1, 1-25-05)

**Sec. 15-62. Application of article.**

This article applies only to certificated contracts.  
(Ord. No. 84-146, § 1, 1-31-84)

**Sec. 15-63. Necessity for certificate.**

(a) It is the policy of the city that a bidder, in order to be eligible for award of a certificated contract, must hold a certificate as of the time that bids for the contract are opened.

(b) A partnership or joint venture which holds such a certificate in its own name or which is composed of persons which all hold such certificates complies with the foregoing policy.

(c) Whenever the director proposes that a certificated contract be awarded to a bidder which is not the lowest bidder, the director shall notify each lower bidder as to the proposed award and provide each lower bidder an opportunity to appear before the director (as the city council's designated representative) and present evidence concerning its responsibility. This opportunity shall be in addition to the opportunity for a hearing before the city council provided for by this article in case of disapproval or revocation of a certificate. The director may recommend that the city council grant a waiver from the policy set forth in subsection (a), above, for good cause.  
(Ord. No. 84-146, § 1, 1-31-84)

**Sec. 15-64. Applications for certificates.**

(a) A person desiring to obtain a certificate for any given classification must submit an application to the director on a form promulgated by the director. An applicant must be a natural person, a partnership (a joint venture is considered a partnership) or a corporation. In the application, the applicant shall set forth:

- (1) The name and assumed name (if any) of the applicant; all names under which the applicant has done business in the preceding five years; if the applicant is a partnership, the name and address for each partner shall be set out; if the applicant or any partner of the applicant is a corporation, the applicant shall set forth:
  - a. The name of the corporation and the state of incorporation;
  - b. The names and addresses of the three principal officers;
  - c. The name and address of each person controlling 51 percent or more of

the voting rights of the corporation; if no single person controls 51 percent or more, the applicant shall list the names of each person who controls 20 percent or more; if 51 percent or more is controlled by another corporation, the applicant shall list each person who controls 20 percent or more of the voting rights of such other corporation;

- (2) Information bearing upon the specific qualifications to receive a certificate for the given classification, as requested on the application form;
- (3) The street address (not including a post office box) to which the applicant desires that notices under this article are to be sent; the applicant's telephone number; and the name(s) of the person or persons authorized by the applicant to act on its behalf in connection with the requested certificate; and
- (4) An affirmation that the applicant has read and understands this article and the motion or resolution establishing the qualifications for the classification of certificated contracts for which the certificate is sought.

(b) An application shall be signed by or on behalf of the applicant. With applications signed on behalf of the applicant, the person signing shall submit appropriate proof of authority to act on behalf of the applicant, if so requested by the director. In all cases, the person signing shall execute an affidavit affirming that the statements contained in such application are true and correct.

(c) If requested by the director, either on the application form or in a separate request, an applicant shall submit additional documents and information relating to the qualifications to receive a certificate.

(Ord. No. 84-146, § 1, 1-31-84)

#### **Sec. 15-65. Review of application.**

(a) Whenever an application for a certificate is made, the director shall conduct an investigation with respect to the application and shall take one of the following actions:

- (1) Approve the application if the applicant appears to the director to be qualified to receive a certificate; or
- (2) Tentatively disapprove the application if the applicant does not appear to the director to be qualified to receive a certificate.

(b) An applicant is qualified to receive a certificate for a given classification if:

- (1) The applicant has filed a substantially complete application;
- (2) The applicant has made no false or misleading statement in connection with the application; and
- (3) The applicant meets each of the specific qualifications for receipt of the certificate, as established by motion or resolution for the given classification.

(c) In the case of a corporate applicant which is controlled in its management and operations by another person to such an extent that the other person is the real party in interest, the other person must also meet all of the qualifications to receive a certificate. In such a case, the director shall notify the other person to file an application to be reviewed in conjunction with the application of the original applicant.

(d) The director shall promptly notify the applicant in writing of the action taken. If the application is tentatively disapproved, the action is subject to section 15-68. If the application is approved, the director shall issue a certificate to the applicant.

(Ord. No. 84-146, § 1, 1-31-84)

#### **Sec. 15-66. Form of certificate; duplicates; expiration.**

(a) Each certificate shall contain substantially the following information:

- (1) The name of the holder;

- (2) The date of issuance; and
  - (3) The classification of contracts to which the certificate applies.
- (b) Each certificate shall be signed by the director by a manual or facsimile signature.
- (c) If a certificate is lost, destroyed or stolen, or if the name of the applicant changes, the director may issue a duplicate certificate. The holder shall make proof of such fact to the satisfaction of the director.
- (d) Each certificate expires at noon on the third anniversary of the date it is issued, unless a different expiration is provided for in the motion or resolution establishing the qualifications to receive the certificate. The city council may change the expiration of certificates by motion, resolution or ordinance.
- (Ord. No. 84-146, § 1, 1-31-84)

**Sec. 15-67. Revocation.**

- (a) The director, subject to section 15-68, may tentatively revoke a certificate at any time, if the director determines that:
- (1) The holder of the certificate filed a materially false or misleading application for the certificate;
  - (2) If the holder were to file a new application for a certificate as of that time, the application would be disapproved;
  - (3) The holder has filed a new application, and the holder does not appear to be qualified to receive a new certificate; or
  - (4) The holder has failed to file a required new application for a certificate, or any required information, within the time period allowed by subsection (c) of this section.
- (b) The director shall revoke any certificate when the holder so requests.

(c) The holder of a certificate shall, within ten (10) days following receipt of a written request from the director, file a new application for a certificate and provide all related information as if the application were for a new certificate. (Ord. No. 84-146, § 1, 1-31-84)

**Sec. 15-68. Requirement for hearing; effective dates.**

(a) The director shall provide notice and an opportunity for a hearing to each person whose application for a certificate is tentatively disapproved or whose certificate is tentatively revoked.

(b) A tentative disapproval or tentative revocation becomes final at 5:00 p.m. on the last day for requesting the hearing (which is measured from the date of notice; see section 15-70), unless the applicant or certificate holder requests a hearing before that time in accordance with this article, in which case the action becomes final only if and when the action is affirmed by the city council.

(c) After advertisement for bids for a certificated contract, applications for certificates shall be received until the application deadline stated in the notice to bidders or other bidding document. (This deadline will ordinarily be no sooner than the fifteenth day following the date of the first advertisement for bids, but earlier than the time for submission of bids.) Until such deadline, the director may dispatch notices of tentative revocation which may take effect for that particular contract. Bids for that particular contract will not be opened earlier than the second day following the day when:

- (1) All applications filed before the deadline have either been approved (and certificates issued accordingly) or disapproved (and all disapprovals have become final as stated above); and
- (2) Any such tentative revocations have become final or have been reversed.

If necessary, the director shall take all appropriate action to postpone the bid opening in accordance with section 15-3 of this Code.

Supp. No. 1

(d) In cases where state law does not require formal advertisements for bids, the director may alter the deadlines prescribed by this section. (Ord. No. 84-146, § 1, 1-31-84)

**Sec. 15-69. Notice.**

(a) Written notice pursuant to section 15-68 shall be given to an applicant or certificate holder by one (1) of the following means:

- (1) By depositing the notice in a U.S. Postal Service mail box or receptacle with proper postage affixed and addressed to the person at the person's most current address shown in the certificate records of the director, or, if no such address is shown, at the person's usual place of residence or place of business;
- (2) By hand delivery in person; or
- (3) By delivery to the person's most current address shown in the certificate records of the director, or, if no such address is shown, at the person's usual place of residence or place of business.

(b) The notice shall state:

- (1) The nature of the action and when it becomes final, in compliance with section 15-68.
- (2) The reason or reasons for taking the action;
- (3) The time and manner for requesting a hearing; and
- (4) The date, time and place for the hearing before the city council (if previously established).

(c) Notice shall be deemed to be received on the third day following deposit in the mail pursuant to section (a)(1) hereof or at the time of actual delivery pursuant to sections (a)(2) and (a)(3) hereof. (Ord. No. 84-146, § 1, 1-13-84)

**Sec. 15-70. Hearing.**

(a) A person whose application for a certificate is tentatively disapproved or whose certificate is tentatively revoked may request a hearing at or before 5:00 p.m. on the fifth day following the date the person receives notice of the action taken.

(b) Notwithstanding subsection (2), above, when the last day for requesting a hearing falls on a day when the office of the director is not open to the public at all, or is not open until 5:00 p.m., the time for requesting a hearing is extended until 5:00 p.m. on the next succeeding day on which the office is open until that time.

(c) Requests for hearings must be in writing and delivered to the director's office. A person's failure to deliver a written request within the time allowed shall constitute a waiver of such person's right to a hearing. Persons who request hearings are strongly encouraged to submit written responses to the reason or reasons stated in the director's notice and to attach documents bearing upon such matters, as this will help the city council to determine the position of the person at the hearing.

(d) When a written request for a hearing is delivered within the time allowed, the director shall promptly refer the matter to the city council. The referral shall include:

- (1) A copy of any application forms involved in the proceeding;
- (2) A copy of the director's notice of tentative disapproval or revocation;
- (3) A copy of the request for the hearing;
- (4) A copy of any written response and any related materials submitted by the person requesting the hearing;
- (5) An identification of the specific qualification criteria involved in the proceeding; and
- (6) A summary of the director's position.

(e) It shall be the responsibility of the city council to convene and hold a hearing after the matter is so referred. The city secretary shall give at least three (3) days' notice of the date, time and place of the hearing to the director and the person who requests the hearing, unless such notice has been previously given.

(f) All hearings pursuant to this section shall be conducted under the normal rules of council, except that both the director and the other party to the hearing shall be allotted ten (10) minutes

each to make presentations (and neither is required to reserve time in advance for such presentations, regardless of the number of separate speakers participating in the ten-minute presentations). Subject to such rules, the person requesting the hearing:

- (1) Shall have the right to be represented by counsel;
- (2) May present witnesses in the person's own behalf; and
- (3) May request that the council suspend its normal rules to allow cross-examination of witnesses or other special procedures.

(g) At hearings involving the disapproval of an application for a certificate, the applicant shall carry the burden of proving by a preponderance of the evidence that it is qualified to receive a certificate. At hearings involving the revocation of a certificate, the director shall carry the burden of proving by a preponderance of the evidence that the certificate should be revoked. The director shall attend all such hearings.

(h) Following an opportunity for a hearing, the city council shall reverse or affirm the action taken by the director. The city secretary shall promptly notify the director and the person who requested the hearing as to the decision reached by the city council. The decision of the city council shall be final. If the tentative disapproval of an application is reversed, the director shall issue a certificate to the applicant. If a tentative revocation is reversed, the certificate remains in effect.

(i) Notices required to be given by the city secretary may be given by one of the means allowed by the preceding section or by such other method as a party may designate or consent to.  
(Ord. No. 84-146, § 1, 1-13-84)

**Secs. 15-71—15-80. Reserved.**

## ARTICLE V. MINORITY AND WOMEN BUSINESS ENTERPRISES

### Sec. 15-81. Declaration of policy.

(a) It is the policy of the city to stimulate the growth of local minority and women business enterprises by encouraging the full participation of minority and women business enterprises in all phases of its procurement activities and by affording them a full and fair opportunity to compete for all city contracts. The purposes and objectives of this article are:

- (1) To increase the utilization of local MBE/WBE firms to provide goods and services; and
- (2) To provide opportunities for local MBE and WBE enterprises to broaden and enhance their range of capacities; and
- (3) To increase opportunities for local MBE and WBE enterprises to serve as contractors for the supply of goods and services to the city, in addition to acting as subcontractors to others,

all in order to help eliminate the statistical disparities referred to in the preamble of Ordinance No. 84-1309.

(b) This article is intended to be remedial in nature and to continue only until its purposes and objectives are met as determined by regular periodic reviews.

(Ord. No. 84-1309, 8-22-84; Ord. No. 95-336, § 2, 3-29-95)

### Sec. 15-82. Definitions.

The words and phrases defined in this section shall have the meanings ascribed when used in this article and in article VI of this chapter, unless the context clearly indicates another meaning. For the purpose of these definitions, the singular shall also include the plural, and the plural shall also include the singular.

- (1) *Bidder* means any person or legal entity which submits a bid or proposal to provide labor, goods or services to the city by contract for profit.

- (2) *Contractor* means any person or legal entity providing goods, labor, or services to the city by contract for profit.
- (3) *Established business enterprise* shall mean an MBE, WBE or PDBE or any business applying for certification as an MBE, WBE or PDBE that, by virtue of its size meets or exceeds the standards promulgated by the U.S. Small Business Administration for that category of business, as determined by the procedures described in section 15-87(a) of this Code.
- (4) *Goal-oriented contract* shall mean any contract, agreement or other undertaking anticipated for construction work to be in excess of \$1,000,000.00 and for the supply of goods or nonpersonal or nonprofessional services to be in excess of \$100,000.00 for which:
  - a. Competitive bids are required by law to be taken;
  - b. Which is not within the scope of the MBE/WBE program of the United States Environmental Protection Agency or the United States Department of Transportation; and
  - c. Which the initiating city department, in consultation with the director of the affirmative action division, determines has significant subcontracting potential in fields in which there are adequate numbers of known MBEs and/or WBEs to compete for and perform the subcontract service(s).
- (5) *Minority business enterprise* or *MBE* shall mean a business which is:
  - a. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or
  - b. A corporation in which at least 51 percent of the stock or of the assets of such corporation is owned, controlled and managed by one or more minority persons; or
  - c. A partnership in which at least 51 percent of the assets of such partner-

ship is owned, controlled and managed by one or more minority persons; or

- d. A joint venture in which at least 51 percent of the interests of such joint venture is owned, controlled and managed by one or more minority persons; or
- e. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more minority persons; or
- f. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women and such minority person; or
- g. A business which has been certified as an MBE by the city's affirmative action division under any other MBE program.

(6) *Minority person* shall mean a citizen or legal resident alien of the United States who is:

- a. Black (a person having origins in any of the black racial groups in Africa);
- b. Spanish/Hispanic (a person who is either Mexican, Puerto Rican, Cuban or "other Spanish/Hispanic" in origin or descent. "Other Spanish/Hispanic" are those whose origins are from Spain or the Spanish speaking countries of Central or South America. Persons of Spanish origin may be of any race);
- c. Asian-Pacific American (a person having origins in the Far East, Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian Subcontinent);

- d. Native American (a person having origins in any of the original peoples of North America, American Indian, Eskimo, Aleut, Native Hawaiian).

Origin or descent can be regarded as the ancestry, nationality group, lineage or country in which the person or persons' parents or ancestors were born before their arrival in the United States.

- (7) *Owned, controlled and managed* shall mean that the one or more minority persons or women who own the requisite interests in or assets of a business applying for minority or women business enterprise certification, shall possess equivalent incidents of such ownership, including an equivalent interest in profit and loss, and shall have contributed an equivalent percentage of capital, equipment and/or expertise to the business. Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquishes control over his or her community property interest in the subject business (but by doing so is not required to transfer to his or her spouse his or her community property ownership interest or to characterize the property as the separate property of the spouse). The one or more minority person or woman owners shall have recognized ultimate control over all day-to-day business decisions affecting the MBE or WBE and shall hold a title commensurate with such control. Such ultimate control shall be known to and at least tacitly acknowledged in day-to-day operations by employees of the business.

(8) *Regulated contract* shall mean any contract, agreement or other undertaking for which:

- a. Competitive bids are not required by law to be taken;
- b. Which is not covered by the MBE/WBE programs of the United States Environmental Protection Agency or the United States Department of Transportation; and

- c. Which the recommending city department has determined, in consultation with the director of the affirmative action division:
  - 1. Either has significant subcontracting potential in fields in which there are sufficient known MBEs and/or WBEs to perform the particular subcontract service(s); or
  - 2. Is of a type for which there are sufficient known MBEs and/or WBEs or a combination of the two, which have represented their ability to perform the prime contract service to afford effective competition for the prime contract.
- (9) *Subcontractor* means any business providing goods, labor or services to a contractor if such goods, labor or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City of Houston.
- (10) *Woman* shall mean a person who is a citizen or legal resident alien of the United States and who is of the female gender.
- (11) *Women business enterprise or WBE* shall mean a business which is:
  - a. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or
  - b. A corporation in which at least 51 percent of the stock or assets of such corporation is owned, controlled and managed by one or more women; or
  - c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more women; or
  - d. A joint venture in which at least 51 percent of the interests in such joint venture is owned, controlled and managed by one or more women; or
  - e. Any other business or professional entity in which at least 51 percent of

the assets in such business or professional entity is owned, controlled and managed by one or more women; or

- f. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women; or
- g. A business which has been certified as a WBE by the city's affirmative action division under any program.

(Ord. No. 84-1309, 8-22-84; Ord. No. 98-1213, § 2, 12-16-98)

**Editor's note**—Amendments to Chapter 15 of the Code of Ordinances adopted in sections 15-82, 15-87—15-89 and 15-90—15-95 require the Affirmative Action Division of the Mayor's Office to collect and review data and promulgate procedures, forms, guidelines and criteria for implementation of the provisions of this Ordinance [Ord. No. 98-1213]. In order to allow the Affirmative Action Division to complete such tasks prior to the effective date [12-16-98] of this Ordinance, the amendments to Chapter 15 of the Code of Ordinances adopted in this Ordinance shall take effect on the 90th day next following the date of the passage and approval of this Ordinance. This Ordinance shall not apply to contracts for which bids or proposals are required by law to be taken if advertisement has commenced prior to the effective date of this Ordinance, nor shall this Ordinance apply to any contract of any other type that is authorized prior to the effective date of this Ordinance. For purposes of this note, a contract is authorized upon legislative action of the City Council, if required, or upon its execution by the Mayor, if no legislative action of the City Council is required. Contracts for which bids are not required but have been posted on the City Council Agenda for the week in which this Ordinance takes effect are not required to include a PDBE goal.

### Sec. 15-83. Program elements.

(a) Based upon a review of data submitted annually by affected city departments, the mayor's affirmative action division shall each year submit a progress report to the city council. The report shall include three percentage figures that are intended to as closely as possible represent the ratio of the prior year's measured utilization and capacities of local MBEs and WBEs to do business in:

- (1) The supply of goods and nonpersonal or nonprofessional services;

- (2) The performance of personal or professional services; and
- (3) Construction;

to the prior year's total local business community utilization and capacity to do business in each of the three-named fields of city contracting.

(b) Based upon the measured utilization and capacities identified in subsection (a) above, city council shall from time to time set annual city-wide percentage goals for city contracting with MBEs and WBEs in each of the three named categories described in subsection (a) above. The adjustment, if any, in the percentage goals shall be made during the first quarter of the fiscal year.

(c) It is the responsibility of each city department to determine which contracts initiated by it are goal-oriented contracts and which are regulated contracts. If the determination is made that a contract is a goal-oriented contract or a regulated contract, the initiating department shall review the contract and shall determine, by reference to the MBE/WBE register, the number of certified MBEs and WBEs which have represented to the city that they are in the business of performing all or some of the required contract services. The initiating department director or his or her designee shall determine whether the contract is one to which MBE/WBE provisions should be applied.

- (1) These provisions are not required to be applied in the following circumstances:
  - a. A public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy;
  - b. The service or goods requested are of such a specialized, technical or unique nature as to require the city department to be able to select its contractor without application of MBE/WBE provisions (such as contracts for expert witnesses, certain financial advisors or technical consultants); or
  - c. If application of MBE/WBE provisions would impose an unwarranted

economic burden or risk on the city or unduly delay acquisition of the goods or services, or would otherwise not be in the best interest of the city; or

- d. If the possible MBE/WBE participation level based on MBE and WBE availability would produce negligible MBE or WBE participation.

If one of the above-listed conditions is determined to exist, the department director shall certify that determination to the director of the affirmative action division and specify the conditions which lead to the determination. This certification is to be made prior to award of the contract.

- (2) If the contract does not fall within one of the above-listed exceptions, based upon its overall review, the initiating department:
  - a. Shall assign an appropriate MBE/WBE participation level, if any, for the contract (whether goal-oriented or regulated) considering the local availability of certified MBEs and WBEs in the contract field.

The intention of this article is to provide administrative flexibility in the application of MBE/WBE provisions and in the percentage participation level on a contract-by-contract basis so as not to limit access to city contracting by nonminority and nonwomen owned businesses to a greater degree than necessary to meet the city-wide annual goal and the policies and objectives of this article.

(d) The bidding documents and the contract documents for goal-oriented contracts for which an MBE/WBE participation level has been established shall contain a provision detailing the purposes and objectives of the city's MBE/WBE ordinance and shall incorporate by reference this article and the then-current motion establishing MBE and WBE annual goals. Regulated contracts which are determined to have significant subcontracting potential for which an MBE/WBE participation level has been established shall contain contractual provisions (and proposal provisions if

submitted for proposals or for bids) requiring the contractor to meet or exceed the determined MBE/WBE participation level for that contract, or to establish that it has made good-faith efforts to do so, and that notwithstanding such efforts, was unable to meet or exceed the determined participation levels. The directors of the finance and administration, building services and public works and engineering departments will establish procedures defining good-faith efforts. These procedures will be reviewed and approved by the affirmative action division, the mayor and the city attorney.

(Ord. No. 84-1309, 8-22-84; Ord. No. 86-528, § 17, 4-22-86; Ord. No. 93-514, § 33, 5-5-93; Ord. No. 95-336, §§ 3, 4, 3-29-95; Ord. No. 99-378, § 10, 4-21-99)

**Note**—Section 15-83(d) shall take effect July 1, 1999.

#### **Sec. 15-84. Affirmative action division.**

The affirmative action division of the mayor's office has responsibility for:

- (1) Establishing procedures for the implementation of this article, and reviewing and approving procedures established by city departments, such procedures to be narrowly designed to attain the purposes and objectives specified herein without unduly limiting nonminority or nonwoman owned businesses. Such procedures shall be reviewed and approved by the mayor and by the city attorney prior to implementation;
- (2) Certifying businesses as minority and women business enterprises and maintaining and distributing to affected city departments a current register, updated monthly, of such business (including a separate listing of such businesses whose applications for certification are pending) specifying the categories of city contracting represented by the certified MBEs and WBEs;
- (3) Developing educational programs for and otherwise assisting (without offering favoritism in relation to the competitive

bidding system) minority and women business enterprises to compete effectively for city contracts;

- (4) Making recommendations to the mayor, city council and city departments to further the policies and objectives of this article;
- (5) Reviewing documentation from potential contractors and from contractors concerning good-faith efforts made to meet or exceed the participation level for contracts. The final recommendation to city council for award or for acceptance of work shall be the city department's, although the affirmative action division may take exception;
- (6) Compiling, bimonthly, a report of the progress of city departments, by department, in attaining the city-wide goals set by city council. This report shall be based upon MBE and WBE contractor and subcontractor information, to be specified by the affirmative action division, which each department is to submit to the affirmative action division monthly. The report is to be submitted bimonthly to city council members, the mayor and all affected city department directors for their information;
- (7) Receiving and reviewing complaints and suggestions concerning the MBE/WBE program from contractors, MBEs, WBEs and city departments; and
- (8) Without limiting the authority of the affirmative action division to establish procedures that are consistent with the terms of this article, the division is specifically directed to promulgate and implement procedures as follows:
  - a. Grievance procedures for any person aggrieved by any decision of the division under this article. The procedures shall include notice and a hearing before an impartial hearing officer who shall be appointed by the mayor;
  - b. Arbitration/mediation procedures for the resolution of disputes between

- contractors or bidders and MBE/WBE participants or potential participants with respect to any aspect of compliance with this article, including, without limitation, any assertion that a contractor, subcontractor, or MBE/WBE has failed to make good faith efforts to comply with this article;
- c. Procedures to implement and enforce any sanctions provided under this article;
  - d. Procedures to ensure performance of work by MBE/WBEs, which procedures shall include: (i) a requirement that no more than 50 percent of their work may be subcontracted, without a specific waiver from the division for cause; (ii) a requirement that the minority person or woman owner of an MBE/WBE have the necessary experience, expertise, credentials and regulatory authority to conduct the type of business for which the business is certified; (iii) a requirement that bidders and contractors make good faith efforts to meet or exceed contract MBE/WBE goals; and (iv) a requirement that MBE/WBEs accurately represent all material information required for certification and truly perform the work they are represented to have performed;
  - e. Procedures for counting participation by MBE/WBEs as prime contractors, subcontractors, suppliers and joint venturers on city contracts, which procedures shall ensure that all work performed by MBE/WBEs as prime contractors is included in the computation of the progress made toward meeting the annual city-wide goals;
  - f. Procedures to ensure that this article is limited in its application to the certification of locally based MBEs and WBEs;

- g. Procedures to coordinate the operation of this article with other local MBE/WBE programs, which may include reliance upon certification procedures of other entities that are determined to be reliable and equivalent to this article; and
- h. Procedures to ensure access to necessary records of prime contractors and subcontractors on city contracts.

All procedures established under this section shall be reviewed and approved by the city attorney prior to implementation. A copy of all procedures hereunder shall be maintained in the offices of the division for inspection, and copies may be purchased at the fees prescribed by law. (Ord. No. 84-1309, 8-22-84; Ord. No. 95-336, § 5, 3-29-95)

#### **Sec. 15-85. Filing of plan.**

Before execution of any contract or issuance of any purchase order for which an MBE/WBE goal has been established, a bidder or potential contractor shall submit a plan setting forth how it intends to meet the contract MBE/WBE goal. After execution of a contract or receipt of a purchase order, the contractor shall comply with the submitted plan, unless it has received approval from the director of affirmative action for a deviation therefrom. Approval shall not be unreasonably withheld. While it is not a requirement that a contractor meet its goal, it is required that the contractor objectively demonstrate to the affirmative action division that it has made good faith efforts to meet the goal. To this end, the contractor shall maintain records as prescribed by the affirmative action division demonstrating its efforts at compliance. The contractor shall be required to submit to the affirmative action division reports of its efforts under this article in such form or manner as shall be prescribed by the division. (Ord. No. 95-336, § 6, 3-29-95)

#### **Sec. 15-86. Sanctions.**

(a) The director of affirmative action is authorized to suspend any contractor who has failed to make good faith efforts to meet any goal estab-

lished under this article from engaging in any contract with the city for a period up to, but not to exceed, five years. The director is also authorized to suspend any MBE or WBE who has failed to make good faith efforts to meet all requirements necessary for participation as an MBE or WBE from engaging in any contract affected by this article for a period up to, but not to exceed, five years.

(b) In accordance with section 15-84 of this Code, the affirmative action division shall establish procedures for the imposition of sanctions and shall ensure that no sanction is imposed without notice of the grounds being given, an opportunity for a hearing and an opportunity for appeal to city council or to an impartial hearing officer designated by the mayor. Any procedure established shall be consistent with state law. (Ord. No. 95-336, § 6, 3-29-95)

#### **Sec. 15-87. Determination of established business enterprise status.**

(a) Based upon a review of data submitted by MBEs, WBEs and MBE or WBE applicants and any other information available from its files or the files of any other governmental entity, the affirmative action division of the mayor's office shall determine the size of each MBE, WBE and MBE or WBE applicant by determining the average of the gross receipts for the prior three years and the average number of employees for the 12 calendar months immediately preceding the review, as applicable. The calculation of size shall be based solely upon the size standards and methods of calculation identified by the U.S. Small Business Administration (SBA) including, without limitation those set forth in 13 C.F.R. part 121, subpart A, secs. 121.101 through 121.107, and sec. 121.201, any amendment or successor thereto, or any other document defining such size standards or the calculation thereof that has been fully and finally adopted by the SBA. The review shall be applicable to business entities applying for initial certification as an MBE or WBE or to certified MBEs or WBEs, provided that such review may not be initiated until the applicant or certified MBE or WBE has established a business

history of sufficient length to allow calculation of size based on the three year financial or 12 month employee data, as applicable.

(b) Following the review described in this section, each certified MBE, WBE or MBE or WBE applicant shall be re-evaluated under this section on an annual basis, beginning with the next annual application for re-certification of the business. Provided, however, that if any such business has been subjected to a size evaluation under any provision of this chapter within 180 days immediately preceding the date of its re-certification application, the director of affirmative action may defer a re-evaluation until the annual re-certification next following such date.

(c) All MBEs, WBEs and MBE or WBE applicants shall, upon written request of the director of affirmative action, provide to the director copies of any and all documents, including without limitation financial statements and tax records, requested by the director in connection with the review authorized in subsection (a) of this section, not later than 20 business days following the date of mailing of the request. Failure to timely and completely comply with any such request will authorize the imposition of sanctions under section 15-86 of this Code, or denial of certification in the case of an MBE or WBE applicant.

(d) Following the review authorized by subsection (a) of this section, the affirmative action division of the mayor's office shall classify each MBE, WBE or MBE or WBE applicant whose size meets or exceeds the size standard identified by the SBA for that class of enterprise as an established business enterprise. The classification shall be effective as of the date of mailing the notice provided in section 15-88 of this Code.

(Ord. No. 98-1213, § 3, 12-16-98)

**Note**—See editor's note to § 15-82.

#### **Sec. 15-88. Notice, appeal and waiver.**

(a) Immediately upon classification of a certified MBE or WBE, or any MBE or WBE applicant, as an established business enterprise pursuant to section 15-87 of this Code, the affirmative action division of the mayor's office shall notify the business so classified of the action by United States certified mail, return receipt requested,

addressed to the last known address of the business and deemed given when placed in a United States mail depository.

(b) Each notice shall inform the affected MBE, WBE or applicant of the following matters:

- (1) That the MBE, WBE or applicant has been classified as an established business enterprise;
- (2) That the classification is effective as of the date of mailing of the notice;
- (3) That the MBE, WBE or applicant may appeal the classification or seek a waiver of the classification pursuant to the procedures established under this section;
- (4) That the provisions of section 15-89 of this chapter shall become enforceable with respect to any certified MBE or WBE one year following the notice of classification, unless the decision is reversed or a waiver is granted and the classification is withdrawn prior to the expiration of the one-year period; and
- (5) That any MBE or WBE applicant is not eligible for certification based upon the classification as an established business enterprise and will remain ineligible for certification unless and until any withdrawal of the classification as an established business enterprise pursuant to an appeal or a request for waiver conducted under this section.

(c) In order to appeal a classification as an established business enterprise, an MBE, WBE or MBE or WBE applicant must submit to the director of affirmative action a written notice of appeal no later than 60 days following the date of mailing of the notice of classification. The sole basis for an appeal shall be that the affirmative action division has incorrectly calculated the size of the business according to SBA standards based upon incorrect information or error in computation. The notice of appeal shall be accompanied by any documentation necessary to demonstrate the asserted error. If the director of the affirmative action division finds that an error or errors were made in calculating the size of the business and

that any such error resulted in an incorrect classification as an established business enterprise, the classification shall be withdrawn and the business promptly notified of the withdrawal. If the director finds that no error was made, or that any error would not materially alter the classification, he shall notify the business that the classification is not altered, by certified mail, return receipt requested. The business may within 10 days of the date of mailing of the notice submit to the director of affirmative action a written request for a hearing, which hearing shall be conducted under the procedures set forth in subsections (e) through (g) of this section.

(d) In order to seek a waiver of a classification as an established business enterprise, an MBE, WBE or MBE or WBE applicant must submit to the director of affirmative action a written request for a hearing no later than 60 days following the date of mailing of the notice of classification. The written request shall include documentary evidence, including but not limited to financial statements and tax records, relevant to the following criteria:

- (1) Profitability of the enterprise;
- (2) Sales of the enterprise, including whether the enterprise has 55 percent or more of sales, within the period utilized by the division in its classification determination, that are not related to city contracts;
- (3) Ability of the MBE, WBE or applicant to obtain bonding, if the enterprise acts as a prime contractor or in a category in which obtaining bonding is required; and
- (4) Positive comparison of the enterprise's business and financial profile with those of non-MBE/WBE firms in the same business category based on an objective industry standard.

(e) The director of affirmative action shall notify the affected MBE, WBE or applicant of the place and time of a hearing before the director or his designee to consider an appeal requested under subsection (c) of this section, or a request for waiver of the classification under subsection (d) of this section, or both, as applicable, by United States certified mail, return receipt re-

requested. The hearing shall be set not later than 30 days following receipt of the request, provided that the director or his designee may in his discretion extend such date by a reasonable period for good and sufficient cause shown. Hearings for businesses that have both appealed under subsection (c) of this section and requested a waiver under subsection (d) of this section may be consolidated in a single hearing at the discretion of the director or his designee.

(f) The director shall promulgate written procedures for the conduct of hearings. The director or his designee shall hear each appeal or request for waiver and shall consider only the criteria set forth under subsections (c) and (d)(1) through (d)(4) of this section, as applicable, in determining whether to withdraw the classification of the affected business as an established business enterprise. The director shall develop objective standards for evaluating each factor set forth under subsections (d)(1) through (d)(4) based upon recognized industry or governmental practices or standards. The burden shall be on the business to demonstrate by clear, convincing and cogent evidence either that a material error in classification was made or that the granting of a waiver is justified by at least two of the criteria set forth in subsections (d)(1) through (d)(4) of this section.

(g) Notwithstanding any provision of this Code or of the rules or regulations of the affirmative action division to the contrary, including any provision for arbitration or mediation of a decision of the director of affirmative action, the decision of the director or his designee regarding appeal or waiver shall be final.

(Ord. No. 98-1213, § 3, 12-16-98)

**Note**—See editor's note to § 15-82.

#### **Sec. 15-89. Effect of classification; re-application.**

(a) Upon the expiration of one year following the notice of classification as an established business enterprise referenced in section 15-88(a) of this Code, and in the absence of any withdrawal of such classification by the director of affirmative action, each certified MBE or WBE so classified shall be ineligible for future participation in any city contract as an MBE or WBE and its certifi-

cation shall be withdrawn. No application for re-certification shall be granted absent the prior determination of the director of the affirmative action division that the applicant does not meet or exceed the SBA size standards referenced in section 15-87(a) of this Code. Certified businesses whose evaluation results in classification as an established business enterprise shall timely file any re-certification application due prior to expiration of the one year extension of program eligibility referenced in this section, but the application shall not be granted unless and until the classification is withdrawn or waived.

(b) Notwithstanding any provision of this Code or the rules or regulations of the affirmative action division to the contrary, including any provision for arbitration or mediation of a decision of the director of affirmative action, any initial applicant for MBE/WBE certification who meets the criteria for an established business enterprise at the time of its application and is so classified shall be denied certification on that basis alone and shall have no recourse for the denial except through challenging the classification in the manner set forth in section 15-88 of this chapter. Any and all other matters pertaining to the eligibility of the applicant shall be abated and shall only be reinstated if the classification as an established business enterprise is withdrawn.

(c) The affirmative action division may continue to assist established business enterprises following ineligibility as follows:

- (1) Such businesses, if formerly certified by the city, may be continued to be listed in any listing of MBE/WBE firms in a separate category of established MBE/WBE firms for the information of other private or public entities; and
- (2) Such businesses, if formerly certified by the city, may receive information, counseling and referrals to other agencies supporting business enterprises from the affirmative action division after their classification as established business enterprises.

(d) No sooner than one year following the date of program ineligibility provided in subsection (a) of this section or the denial of certification pro-

vided in subsection (b) of this section, any established business enterprise may apply for reinstatement as a fully eligible, certified MBE or WBE or reinstatement of an application for certification abated under subsection (b) of this section, as applicable, upon demonstrating the existence of one or more of the following conditions:

- (1) That the subsequent history from the date of initial classification as an established business enterprise demonstrates that a size calculation as of the date of application for reinstatement would place the business below the SBA size standards for that category of business;
- (2) That the established business enterprise has successfully obtained an SBA size determination from a federal agency authorized to make such a determination, or has prevailed in an SBA size protest under 13 CFR § 121.1001, et seq., as amended, including any judicial review thereof, establishing that the business does not meet or exceed the applicable SBA size standard;
- (3) That the SBA size standards have been revised in such a manner that the subject business no longer meets or exceeds the size standard for its category based upon the most recent three-year average for receipts or 12 month average for employees, as applicable; or
- (4) That the criteria listed in section 15-88(d) of this Code demonstrate the need to grant a waiver and withdraw the classification of the business as an established business enterprise.

(e) Applications for reinstatement shall be on a form prescribed by the director of the affirmative action division and shall be accompanied by relevant documentary evidence supporting the ground or grounds for reinstatement asserted, as requested by the director.

(f) Within 30 days following receipt of a completed application for reinstatement, the director shall grant the application or deny the application and set the matter for hearing within 30 days of the date of mailing notice of such denial.

(g) The burden on the business applying for reinstatement shall be to demonstrate the existence of one or more of the conditions set forth in subsections d(1) through d(4) of this section by clear, convincing and cogent evidence, to be evaluated by the director under hearing procedures consistent with the nature of the application and, to the extent applicable, with the provisions of subsections (c), (d), (e) and (f) of section 15-88 of this Code. In addition, a business seeking reinstatement under subsection (b)(4) of this section that has previously sought a waiver of classification as an established business enterprise pursuant to section 15-88(d) of this chapter must present evidence of a material and substantial change in circumstances not shown at the preceding hearing, and the director or his designee shall disregard evidence that is repetitious or cumulative of the prior hearing on the matter.

(h) The decision of the director of affirmative action or his designee following a hearing on reinstatement shall be final, and any applicant denied reinstatement is to be notified in writing of the decision within ten days following the hearing. No business denied reinstatement may subsequently apply for reinstatement until the expiration of one year from the date of the denial.

(Ord. No. 98-1213, § 3, 12-16-98)

**Note**—See editor's note to § 15-82.

## ARTICLE VI. PERSONS WITH DISABILITIES BUSINESS ENTERPRISES\*

### Sec. 15-90. Declaration of policy.

(a) It is the policy of the city to stimulate the growth of local business enterprises owned, controlled and managed by persons with disabilities

**\*Editor's note**—Ord. No. 93-1358, § 1, repealed former art. VI, §§ 15-90—15-97, in its entirety, which pertained to restrictions on certain business transactions related to South Africa.

Section 2 of said Ord. No. 93-1358 read as follows:

"That Article VI of Chapter 15 of the Code of Ordinances, Houston, Texas, is saved from repeal for the limited purpose of its continuing application to contracts executed before the effective date of this ordinance. For purposes of this section, a contract is considered to have been executed on the date of its countersignature by the city controller."

Subsequently, Ord. No. 98-1213, § 4, adopted Dec. 16, 1998, added a new Art. VI, §§ 15-90—15-95 to read as herein set out.

by encouraging the full participation of such businesses in all phases of its procurement activities and by affording them a full and fair opportunity to compete for all city contracts. The city council finds and determines that such businesses are historically underutilized and disadvantaged with respect to government and private sector contracting and in need of the measures provided by this article. The purposes and objectives of this article are:

- (1) To increase the utilization of local PDBE enterprises to provide goods and services; and
- (2) To provide opportunities for local PDBE enterprises to broaden and enhance their range of capacities; and
- (3) To increase opportunities for local PDBE enterprises to serve as contractors for the supply of goods and services to the city, in addition to acting as subcontractors to others, all in order to help eliminate the historical underutilization and disadvantages faced by such businesses.

(b) This article is intended to be remedial in nature and to continue only until its purposes and objectives are met as determined by regular periodic reviews.

(c) This article is not intended to duplicate, supplement or overlap in any fashion the requirements, definitions, procedures or remedies afforded by the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and shall be construed and applied in a manner entirely separate from and independent of any measures required by that Act.

(d) This article is not intended to duplicate, supplement or overlap in any fashion any state or federal program providing aid or assistance to individuals with disabilities, or to entities that aid or assist individuals with disabilities, with respect to rehabilitation, employment, job training, housing, economic or medical assistance and shall be construed and applied in a manner entirely separate from and independent of any such state or federal program.

(Ord. No. 98-1213, § 4, 12-16-98)

Note—See editor's note to § 15-82.

## Sec. 15-91. Definitions.

(a) The following words and phrases defined shall have the meanings ascribed when used in this article unless the context clearly indicates another meaning.

- (1) *Chronic or permanent character* shall mean, with respect to a medically determined physical or mental impairment, that the impairment is medically anticipated to be of a continuing nature, with no present prognosis of complete or substantially complete recovery through the passage of time and/or the application of presently available medical treatment or rehabilitative therapy.
- (2) *Major life activities* shall mean functions significantly affecting a person's quality of life, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (3) *Medical doctor* shall mean an individual licensed to practice medicine in the State of Texas.
- (4) *Medically determined* shall mean determined by a medical doctor.
- (5) *Owned, controlled and managed* shall mean that the one or more persons with a disability who own the requisite interests in or assets of a business applying for persons with disabilities' business enterprise certification shall possess equivalent incidents of such ownership, including an equivalent interest in profit and loss, and shall have contributed an equivalent percentage of capital, equipment and/or expertise to the business. Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquishes control over his or her community property interest in the subject business (but by doing so is not required to transfer to his or her spouse his or her community property ownership interest or to characterize the property as the

separate property of the spouse). The one or more persons with a disability owners shall have recognized ultimate control over all day-to-day business decisions affecting the PDDBE and shall hold a title commensurate with such control. Such ultimate control shall be known to and at least tacitly acknowledged in day-to-day operations by employees of the business.

(6) *Person with a disability* shall mean a citizen or legal resident alien of the United States who has a presently existing, medically determined physical or mental impairment of a chronic or permanent character which substantially limits one or more of his or her major life activities. The term persons with disabilities shall not include individuals currently engaging in the illegal use of drugs or currently engaging in the abuse of alcohol. However, the term persons with disabilities does not exclude individuals who have successfully completed a supervised drug or alcohol rehabilitation program and are no longer engaging in the illegal use of drugs or the abuse of alcohol and who otherwise qualify as persons with disabilities under the criteria set forth in this article.

(7) *Persons with disabilities business enterprise or PDDBE* shall mean a business that is:

- a. A sole proprietorship in which the owner is a person with a disability who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or of the assets of the corporation is owned, controlled and managed by one or more persons with a disability; or
- c. A partnership in which at least 51 percent of the assets of the partnership is owned, controlled and managed by one or more persons with a disability; or
- d. A joint venture in which at least 51 percent of the interests of the joint

venture is owned, controlled and managed by one or more persons with a disability; or

- e. Any other business or professional entity in which at least 51 percent of the assets in the business or professional entity is owned, controlled and managed by one or more persons with a disability.

(b) See section 15-82 of this Code for additional definitions.

(Ord. No. 98-1213, § 4, 12-16-98)

**Note**—See editor's note to § 15-82.

### **Sec. 15-92. Program elements.**

(a) Unless expressly excepted under this article, all elements, requirements and procedures of the MBE/WBE program set forth in article V of this chapter, including, without limitation, applicable definitions, reporting requirements, goal-setting procedures, city department procedures, exceptions, contract and participation provisions, plan filing requirements, sanctions and established business enterprise provisions, are hereby adopted and incorporated as if fully set forth herein and shall be applied to PDDBEs in the same manner as to MBEs and WBEs.

(b) The affirmative action division of the mayor's office has responsibility for establishing procedures for the PDDBE program consistent with the directives set forth under section 15-84 of this Code for the MBE/WBE program; provided, that the affirmative action division may simplify, condense or modify reporting and monitoring responsibilities consistent with the anticipated lower volume of PDDBE contracts in the interest of administrative efficiency.

(c) Percentage goals for PDDBEs shall be separate and apart from percentage goals established for city contracting with MBEs and WBEs.

(d) All procedures established under this section shall be reviewed and approved by the city attorney prior to implementation. A copy of all procedures established hereunder shall be main-

tained in the offices of the division for inspection, and copies may be purchased at the fees prescribed by law.

(Ord. No. 98-1213, § 4, 12-16-98)

**Note**—See editor's note to § 15-82.

**Sec. 15-93. Application and certification.**

(a) Applications for certification as a PDDBE and any addenda thereto shall be in a form to be promulgated by the director of the affirmative action division of the mayor's office, and the requirements for certification shall be consistent with the applicable requirements set forth under article V of this chapter and the procedures of the affirmative action division for businesses applying for certification as MBEs or WBEs, except as follows:

- (1) Each applicant for certification as a PDDBE shall, in addition to any other information required, submit a disability affidavit and accompanying letter from a medical doctor documenting the present existence and nature of the medically determined physical or mental impairment asserted as the basis for certification as a PDDBE; and
  - (2) Authorize the release of any medical information required by the director to verify the medical determination of a presently existing physical or mental impairment and/or the degree to which the major life activity or activities are impaired.
- (b) The determination of a qualifying impairment shall include the following criteria:
- (1) The impairment must be shown to have been evaluated through a comprehensive diagnostic study, and in the case of a mental impairment through a psychiatric or psychological evaluation, that is sufficient to demonstrate that a medically determined physical or mental impairment of a chronic or permanent character presently exists and that it substantially limits one or more of the applicant's major life activities.

- (2) The applicant's substantial functional limitations must be a result of his or her physical or mental impairment.
- (3) The existence of a physical or mental impairment alone, without substantial and continuing functional limitations as a result of the impairment, does not satisfy the requirements for certification.

(c) Notwithstanding any provision of this chapter to the contrary, the director of the affirmative action division of the mayor's office shall have the authority to question the authenticity or accuracy of information provided by any PDDBE applicant, either for initial certification or for renewal of certification, purporting to verify the present existence of the claimed mental or physical impairment and/or the degree to which the impairment is claimed to limit a major life activity.

(d) If the director of the affirmative action division of the mayor's office finds that the PDDBE application meets the criteria of this article, article V of this Code and applicable rules and procedures promulgated by the director, the director shall approve the application.

(e) If the director of the affirmative action division determines that questions exist as to the matters referenced in subsection (b) of this section, the director shall notify the applicant in writing of the nature of the questions raised and set the matter for a hearing before the director or his designee not later than 30 days following the date of mailing of the notice. At such hearing the burden shall be upon the applicant to provide clear, convincing and cogent evidence to establish the nature and extent of the claimed impairment. The decision of the director or his designee denying or granting certification shall be final, subject to the grievance procedures authorized by section 15-84(8)(a) of this Code.

(Ord. No. 98-1213, § 4, 12-16-98)

**Note**—See editor's note to § 15-82.

**Sec. 15-94. Renewal of certification.**

(a) PDDBE certification shall be renewable on an annual basis pursuant to procedures established by the director of the affirmative action division of the mayor's office.

(b) In addition to any other criteria that may be established for renewal of PDDB certification, applications for renewal shall be evaluated under the same criteria and subject to the same manner of review as authorized by section 15-93 of this Code for original applications.

(c) This section shall not be construed to prohibit any person or business certified as an MBE or WBE from also being certified as a PDDB; provided, however, that any such person or business with dual certification shall not be permitted to participate in both a M/WBE goal and a PDDB goal in the same contract.

(Ord. No. 98-1213, § 4, 12-16-98)

**Note**—See editor's note to § 15-82.

#### **Sec. 15-95. Confidentiality of records.**

Information submitted by PDDB applicants in connection with an application for certification or re-certification as a PDDB under this article shall be confidential and may be disclosed by the affirmative action division only pursuant to the requirements of a statute or the order of a court of competent jurisdiction.

(Ord. No. 98-1213, § 4, 12-16-98)

**Note**—See editor's note to § 15-82.

#### **Secs. 15-96—15-100. Reserved.**

### **ARTICLE VII. PUBLIC WORKS CONTRACTOR DEBARMENT**

#### **Sec. 15-101. Definitions.**

(a) As used in this article, the following terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

*Administrative official* means the official designated by the director of building services to oversee the administrative process of debarment.

*Contractor* means any person who contracts with or otherwise provides goods or services to the city for public works contracts, and includes subcontractors who by agreement provide any goods, materials, or services used in the performance of city public works contracts.

*Day* means a calendar day.

*Debarment* means action taken by the city council to exclude a person from acting as a city public works contractor for a specified period.

*Hearing official* means the person designated by the director of the department of building services to conduct a debarment or reinstatement hearing and to make findings and recommendations to city council. The hearing official must not be a person who participated in the administration of the contract giving rise to the debarment proceeding and shall not be the same person as the administrative official who investigated the referral. The hearing official may be a city employee, unless the contractor requests and makes security for the services of a private hearing official as provided in this article. The mayor shall, based upon recommendations from the administrative official and contractor organizations, develop and maintain a list of private hearing officials who will be designated by the director to conduct hearings under this article. Subject to their timely availability, the director shall assign private hearing officials in rotation from the list of persons appointed by the mayor.

*Public works contract* means any city contract or subcontract for the construction of public works, whether issued under the administrative oversight of the public works and engineering department, the aviation department, or the building services department. The term includes contracts on competitive bids pursuant to chapter 252 of the Texas Local Government Code, but not contracts for professional services that are exempt from bidding under the Texas Professional Services Procurement Act.

*Wrongful conduct* means any of the types of conduct or offenses listed in section 15-103(1)—(4) of this Code.

(Ord. No. 00-859, § 2, 9-27-00)

#### **Sec. 15-102. Debarred person ineligible.**

(a) No person subject to a debarment order shall be eligible for award of any public works contract. No person subject to a debarment order is a responsible bidder for any public works contract.

(b) No person subject to a debarment order shall be eligible to serve as a subcontractor or as a goods or materials supplier for any public works contract. This provision shall not be construed to preclude completion of existing subcontracts as provided in section 15-110(b) of this Code. (Ord. No. 00-859, § 2, 9-27-00)

### **Sec. 15-103. Grounds for debarment.**

A person found to have committed any of the following acts in the two-year period preceding referral to the administrative official may be debarred:

- (1) Any significant and material breach of any public works contract, including without limitation, wrongfully and without good cause:
  - a. Failing to complete a contract;
  - b. Failing to perform work in accordance with the terms of a public works contract and accepted industry practices as they exist within the city;
  - c. Failing to comply with state, federal or local laws or regulations that are applicable to the performance of a contract or to public works in general; or
  - d. Failing to complete the work on a public works contract within the time allowed.
- (2) Knowingly using a debarred contractor as a subcontractor.
- (3) Conviction or civil adjudication of the contractor or the contractor's officers or owners of a criminal offense or civil misconduct in connection with the contractor's business that evidences a lack of business integrity or business honesty, including without limitation, embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements, or receiving stolen property, or violations of laws relating to the obtaining of or performing of public contracts.

- (4) Any other conduct that evidences the inability of the contractor to responsibly complete public works contracts on behalf of the city.

The conduct giving rise to the debarment may be based upon actions taken in connection with work undertaken for the city, other public entities, or private entities. (Ord. No. 00-859, § 2, 9-27-00)

### **Sec. 15-104. Debarment recommendation.**

(a) Any city department director or elected official may refer a contractor to the administrative official for purposes of determining whether a debarment of the person should be made. The referral shall be signed and in writing and shall set forth the basis of the complaint asserted.

(b) Following receipt of the referral, the administrative official shall make inquiry to determine whether probable cause exists to believe that wrongful conduct may, in fact, have been committed. If so, the matter shall proceed to a hearing as provided below. If not, the administrative official shall so advise the referring department director or official and the person against whom the complaint was made and shall take no further action.

(c) Upon a determination by the administrative official that probable cause exists to believe that wrongful conduct may in fact have been committed, the administrative official shall notify the contractor in writing, setting forth:

- (1) The wrongful conduct alleged, including the contract number or numbers, date or dates, and/or other facts, as applicable.
- (2) That a hearing will be conducted no sooner than 15 days after the date the notice is issued, including the date, time, and place of the hearing.
- (3) That the contractor may be represented by legal counsel, may present evidence, and may cross examine witnesses at the hearing.
- (4) That the hearing will be reported by a court reporter at city expense and that, in the event debarment is recommended, the

city council may take that action on the basis of the record and without conducting a further evidentiary hearing.

- (5) That the contractor may, in writing, request that the director designate a private hearing official to conduct the hearing in lieu of a city employee, provided that the contractor shall in that instance be responsible for the private hearing official's costs in the event that city council debar the contractor. A contractor who requests a private hearing official shall be required to provide security for reasonably anticipated costs of the private hearing official's services in an amount specified by the director by posting a cash bond or surety bond at least five days prior to the commencement of the hearing.

(d) The hearing shall be conducted by the hearing official. The burden of establishing that grounds exist for debarment shall rest with the city by a preponderance of the credible evidence. A complete record of the hearing shall be maintained for referral to city council.

(e) If the hearing official finds that wrongful conduct has occurred and determines that debarment would be in the best interests of the city, he shall reduce the findings to writing and forward them, along with a recommendation of debarment for a period of time that is commensurate with the nature of the wrongful conduct, to the mayor for presentation to city council. If the hearing official finds that no debarment should be recommended, he shall so advise the contractor. Any decision to debar a contractor must be made on the same standard of evidence set out in section 15-104(d) of this Code.

(f) Notice of the hearing official's determination and of the contractor's rights under subsection (g) below shall be mailed to the contractor within ten days following the completion of the hearing.

(g) If debarment is recommended, the contractor may file written exceptions with the city secretary within ten days following the date of issuance of the hearing official's notice.

(Ord. No. 00-859, § 2, 9-27-00; Ord. No. 05-91, § 1, 1-25-05)

#### **Sec. 15-105. Debarment by city council.**

Following presentation of a debarment recommendation from the hearing official and expiration of the ten day period allowed for response by the contractor, city council shall consider the matter, based exclusively upon the hearing official's recommendation, the record created at the hearing, and any written exceptions filed under section 15-104(g) of this Code. The city council may:

- (1) Adopt the recommendation and debar the contractor for the recommended period of time;
- (2) Adopt the recommendation with modifications as to the period of debarment, or otherwise;
- (3) Return the recommendation to the hearing official for development of further factual evidence if the city council finds the record to be incomplete; or
- (4) Reject the recommendation and take no action against the contractor.

The decision of the city council shall be final.  
(Ord. No. 00-859, § 2, 9-27-00)

#### **Sec. 15-106. Period of debarment.**

The period for debarment shall be commensurate with the seriousness of the cause or causes therefor, but in no case shall the period exceed two years.

(Ord. No. 00-859, § 2, 9-27-00)

#### **Sec. 15-107. Notice and record of debarment.**

The city secretary shall notify the contractor in writing of the city council's decision. The city secretary shall maintain the record of all debarred persons. In cooperation with the administrative official, the city secretary shall cause the record to be published on the city's internet website or otherwise made available to contractors.

(Ord. No. 00-859, § 2, 9-27-00)

#### **Sec. 15-108. Effective dates.**

(a) A decision to debar a contractor becomes final on the day that city council makes a debarment determination.

(b) A debarment shall remain effective for the period of time specified unless the city council sooner issues an order of reinstatement.  
(Ord. No. 00-859, § 2, 9-27-00)

#### **Sec. 15-109. Reinstatement.**

(a) A debarred contractor may petition for reinstatement by written request to the administrative official, at any time after he has served at least one-half of the original period of debarment specified in the debarment order. A hearing shall be conducted in accordance with the procedures set forth in section 15-104 of this Code, except that the burden shall be upon the debarred person, who shall be responsible for all court reporting fees and for hearing official fees, if a private hearing official is requested.

(b) At the reinstatement hearing, the hearing official shall consider any evidence presented by the contractor to demonstrate that the contractor may responsibly perform public works contracts. If the hearing official determines that there is good cause to end the debarment, he shall reduce the findings and recommendation to writing and submit them to the mayor for consideration by city council as set out in section 15-105 of this Code.

(c) The city council shall either terminate or continue the debarment. If city council terminates the debarment, the city secretary shall immediately remove the contractor's name from the list of debarred contractors, and the contractor shall become eligible for award of city contracts.

(Ord. No. 00-859, § 2, 9-27-00)

#### **Sec. 15-110. Effect of debarment order.**

(a) An order of debarment issued by city council against a person constitutes a finding under section 252.043(a) of the Texas Local Government Code that the person is not responsible and operates as city council's rejection of any bid submitted by the person during the debarment period. The city secretary shall return a debarred person's bid and bid bond immediately after bids are opened without requirement of any further action by city council.

(b) A debarment order against a person shall not affect any contracts or subcontracts existing at the time of the issuance of the debarment order if the person is not in default of such contract.  
(Ord. No. 00-859, § 2, 9-27-00)

#### **Sec. 15-111. Remedies cumulative.**

The provisions of this article are cumulative of any other rights or remedies available to the city in connection with the award of any public works contracts to bypass bidders who are not responsible, regardless of whether they have been so declared hereunder. This right extends but is not limited to declining to award public works contracts to bidders that have the same or substantially the same officers, owners, or managers as debarred contractors.

(Ord. No. 00-859, § 2, 9-27-00)

#### **Sec. 15-112. Effect on other ordinances.**

A debarred contractor is not eligible for certification under articles IV, V, or VI of this chapter. Debarment shall have the effect of terminating any certification thereunder.

(Ord. No. 00-859, § 2, 9-27-00)

### **ARTICLE VIII. CITY CONTRACTS; INDEBTEDNESS TO CITY\***

#### **Sec. 15-121. Policy.**

(a) Except as provided in section 15-126 of this Code or subsection (b) of this section, no contract shall be let, nor any other business transaction entered into, by the city with any contracting entity that is indebted to the city or a qualifying entity or whose owner is indebted to the city or a qualifying entity, if the contract or transaction comes within the provisions of section 15-1(c) of this Code. No city contract shall be amended or extended if the contracting entity or any owner thereof has become indebted to the city or a qualifying entity since the inception of the con-

\*Editor's note—Ord. No. 05-370, § 2, adopted April 13, 2005, amended Ch. 15, Art. VIII, §§ 15-121—15-126, in their entirety to read as herein set out. Formerly said article pertained to similar subject matter and derived from Ord. No. 03-318, § 4, 4-2-03.

tract unless such indebtedness is fully paid prior to any council action to amend or extend such contract.

(b) Exception. Subsection (a) of this section shall not apply to any contract if prohibited by the provisions of Chapter 252, Texas Local Government Code (as the same may be amended from time to time), or by any other applicable state or federal law, rule or regulation restricting the power of the city to promulgate the policy set forth herein; provided however, that when a contract or other business matter that requires council action is placed before city council, regardless of the applicability of subsection (a), the city council shall be notified in writing whether a proposed contracting entity or owner thereof, if applicable, is indebted to the city or a qualifying entity.

(Ord. No. 05-370, § 2, 4-13-05)

#### **Sec. 15-122. Definitions.**

The following terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Affidavit* shall mean a sworn statement containing the full name of the proposed contracting entity, including the assumed name of a person or sole proprietor doing business under such assumed name, and the business and residence addresses of all persons who own five percent or more of a contracting entity, where applicable, or, where a contracting entity is a non-profit corporation, the full names and the business and residence addresses of all officers of the non-profit corporation.

*Contracting entity* shall mean a person, whether acting as an individual or operating as a sole proprietorship, corporation, non-profit corporation, partnership, joint venture, limited liability company, or other entity, regardless of the form of its organization, that seeks to enter into a contract that requires approval by the city council, but shall exclude governmental entities.

*Controller* shall mean the city controller.

*Debt* shall mean any delinquent sum of money in an amount greater than \$100.00 levied, imposed or assessed against any contracting entity, or owner thereof, by the city or any qualifying entity for ad valorem taxes on real or personal property located within the boundaries of the city.

*Debtor* shall mean a contracting entity, or owner thereof if the contracting entity is other than a person doing business as an individual or sole proprietorship, that owes a debt to the city or a qualifying entity, as shown by city or other governmental records.

*Delinquent* shall mean past due, unpaid and no longer subject to challenge, protest or appeal, as those processes are described in the Texas Tax Code.

*Indebted* shall mean owing a debt to the city or a qualifying entity, without regard to ability or inability to pay the same, where the amount is delinquent, provided that a debtor who remains current on all obligations of an installment agreement executed by the debtor regarding a debt shall not be deemed indebted for purposes of this article.

*Initiating director* shall mean the director of the department responsible for a matter that is intended to, or does, result in the making of a contract or entry into another business transaction between a contracting entity and the city.

*Owner* shall mean, with respect to a contracting entity, an individual contractor in his or her own name or as a sole proprietorship, and as to a contracting entity other than an individual or person operating as a sole proprietorship, any person who owns five percent or more thereof, or, in the case of a non-profit corporation, any officer of the non-profit corporation.

(Ord. No. 05-370, § 2, 4-13-05)

#### **Sec. 15-123. Qualifying entities.**

(a) For purposes of this article only, a qualifying entity shall include only the following governmental entities, but only if such entity has adopted and actively enforces a policy or administrative procedure that causes such entity to refuse to

enter into any contract or business transaction with a contracting entity, or owner thereof, indebted to the city:

- (1) Harris County and/or the Harris County Flood Control District;
- (2) Harris County Hospital District;
- (3) Fort Bend County;
- (4) Montgomery County;
- (5) Houston Independent School District; or
- (6) Any school district or other local governmental unit that levies, imposes or assesses ad valorem taxes against any real or personal property located within the boundaries of the city.

(b) No entity named in subsection (a) of this section shall be deemed a qualifying entity until the director of finance and administration has certified that such entity has implemented a policy or administrative procedure consistent with the purpose of this article.

(Ord. No. 05-370, § 2, 4-13-05)

**Sec. 15-124. Determination of indebtedness; procedure.**

(a) All proposals or other information submitted to the city in connection with any proposed contract, transaction, project or matter shall include an affidavit. Contracts typically awarded without the submission of a proposal, including but not limited to, contracts for engineering and architectural services, shall be subject to this section and shall not be finally approved by the city council until a determination as to any indebtedness of the contracting entity or any owner thereof to the city or a qualifying entity has been made as provided in this section.

(b) Any failure to submit the affidavit(s) required by subsection (a) shall constitute grounds for rejection or non-consideration of such proposal or other information. It shall be the duty of the initiating director to ascertain that the affidavit has been properly prepared and submitted.

(c) Upon the initiating director's determination of the contracting entity to be recommended for the award of a contract, copies of affidavit(s)

submitted by such entity shall be promptly forwarded by the initiating director to the controller.

(d) Upon receipt of an affidavit, the controller shall immediately investigate whether the recommended contracting entity or any owner thereof is indebted to the city or a qualifying entity and, if so, determine insofar as possible with the information provided, whether such indebtedness is then under active protest, challenge or appeal by such debtor. The controller shall maintain a log of all received affidavits and, at least weekly, forward a copy of such log to the city's delinquent tax collection firm or other third party of the controller's choosing, able to assist the controller in identifying debts owed the city or qualifying entities, for a determination of any debt due the city or any qualifying entity.

(e) Promptly after receipt of the report of the delinquent tax collection firm, or other third party, the controller shall certify in writing to each initiating director whether, based on the best information available, a recommended contracting entity is indebted to the city or a qualifying entity and, if so, the amount of such debt. The initiating director shall immediately forward a copy of the controller's certificate or report to each affected contracting entity, together with the telephone number of the delinquent tax collection firm, a contact in the controller's office, or the alternate third party source of information, by which a debtor may confirm the information in such certificate or record as well as the address to which an appeal is to be filed under section 15-125 of this Code. The controller's certificate or report will be deemed to have been received by the contracting entity within three business days after its deposit in the U.S. mail by the initiating director.

(f) Should the controller fail to produce the certificate or report required by subsection (e) within ten business days from receipt of an affidavit, the affected contracting entity and all owners thereof will be deemed not to be indebted to the city or a qualifying entity for purposes of this article only.

(g) The controller's certificate or report shall be valid only until the first of March next following its date of issue. A subsequent award to the

same contracting entity during the time that the controller's certificate or report remains valid may be based on the controller's certificate or report. A subsequent award to the same contracting entity after the first of March of each calendar year is subject to all of the requirements of this section.

(h) If the debt shown in the controller's certificate or report is paid, the receipt or other written proof of payment shall be delivered to the controller who shall immediately issue a new certificate or report to the initiating director confirming such payment.

(i) When an award or other transaction is ready to be submitted to the city council for action, the initiating director shall forward to the city secretary the controller's certificate or report, or the report of the three-member panel sustaining a debtor's protest, challenge or appeal as provided in section 15-125(c) of this Code, and all related affidavit(s).

(j) The certificates or reports of the controller provided for in this section shall be made available to council members who request them.  
(Ord. No. 05-370, § 2, 4-13-05)

#### **Sec. 15-125. Appeal.**

(a) Any debtor shall have the right to appeal the controller's certificate or report under section 15-124(e) of this Code by filing a written statement requesting a hearing. The debtor's written statement must set forth fully the basis for any appeal and be accompanied by all documentation relied upon in support thereof. Delivery of such request for hearing may be effected by personal delivery to the office of the initiating director or by mail, postage prepaid, to the initiating director but must be received by the initiating director within five business days after the debtor's receipt of the controller's certificate or report.

(b) A hearing under subsection (a) shall be conducted by a three-member panel consisting of the director of finance and administration, the city secretary and the initiating director, or their designees, within five business days following the initiating director's receipt of a written request for such hearing. Notice of the three-member

panel's decision in an appeal shall be given to the initiating director and affected contracting entity in writing by deposit in the U. S. mail within five business days after such decision.

(c) Any final decision by the three-member panel that a contracting entity, or an owner thereof, is indebted may be appealed to the city council pursuant to compliance with the terms and provisions of rule 12 of the city council rules of procedure, set forth in section 2-2 of this Code, by the filing of a notice of appeal in the city secretary's office within 15 days after the date the three-member panel's decision is deposited in the U.S. mail. The determination of the city council in such matter shall be final.

(Ord. No. 05-370, § 2, 4-13-05)

#### **Sec. 15-126. Exceptions.**

(a) The policy and procedures set forth in this article do not apply in the following instances:

- (1) Public emergency or calamity.
- (2) Purchase of goods or services available only from a single source, including the lease of any personal property or equipment by the city.
- (3) Circumstances in which the amount of the indebtedness is insignificant in relation to the economic or other benefit or harm that may result from the application of the policy, as determined by the three-member panel described in section 15-125(b) of this Code.
- (4) Pending bankruptcy of an indebted owner or contracting entity.
- (5) Concluded bankruptcy of an indebted owner or contracting entity in which the debt was legally discharged.
- (6) Memberships purchased by the city.
- (7) Condemnation awards.
- (8) Property acquisitions, including the lease of any real property to or by the city, excluding any lease of city-owned property below fair market rental.
- (9) Purchase of property, casualty or other insurance by the city.

CONTRACTS

§ 15-142

(10) Banking or other depository contracts.

(b) This policy may also be waived as to other matters where city council deems it to be in the city's interest.

(Ord. No. 05-370, § 2, 4-13-05)

**Secs. 15-126—15-140. Reserved.**

**ARTICLE IX. SMALL BUSINESS  
ENTERPRISES**

**Sec. 15-141. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Program* means the MWBE Program set forth in Article VI of this Chapter.

*Small business enterprise* means a firm whose gross revenues or number of employees, averaged over the past three years, inclusive of any affiliates as defined by 13 CFR Section 121.103, does not exceed the size standards defined in Section 3 of the Federal Small Business Act and applicable Small Business Administration regulations related to the size standards found in 13 CFR Part 121. The term shall also include a certified minority/women/disadvantaged business defined in this Code.  
(Ord. No. 06-657, § 2, 6-21-06)

**Sec. 15-142. Policy; application.**

(a) The policy set forth in section 15-81 of this Code pertaining to minority and women business enterprises shall apply equally to small business enterprises as defined in this article, except as provided in subsection (b) of this section.

(b) Notwithstanding any other provision of the program, it is the intent of this article that small business enterprises shall be authorized to participate in the program only with respect to construction contracts covered by the program.  
(Ord. No. 06-657, § 2, 6-21-06)